

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

**SERVANTS OF JESUS AND MARY, INC., d/b/a THE
FATIMA CENTER**

Plaintiff,

-vs-

**THE NATIONAL COMMITTEE FOR THE NATIONAL
PILGRIM VIRGIN OF CANADA, THE FATIMA
CENTER U.S.A., INC., and ANDREW CESANEK,**

Defendants.

**DECLARATION OF
MATTHEW J. LARKIN IN
SUPPORT OF
PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

1:18-CV-00731-JJM

MATTHEW J. LARKIN declares the following under penalty of perjury:

1. I am an attorney duly licensed to practice law before the courts of the State of New York and the United States District Court for the Western District of New York. I am a partner with the law firm of Barclay Damon LLP, attorneys for Plaintiff Servants of Jesus and Mary, Inc., d/b/a The Fatima Center (“Plaintiff” or “SJM”). As such, I am fully familiar with the facts and circumstances set forth herein.
2. This Declaration is respectfully submitted in support of SJM’s motion for partial summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure.
3. The relevant facts supporting the motion are set forth at length in the Affidavit of Ellen Montgomery, sworn to February 21, 2021 and the Statement of Material Facts submitted pursuant to Local Rule 56(a)(1) of the United States District Court of the Western District of New York.
4. The legal grounds for relief as set forth at length in the accompanying Memorandum of Law.

5. SJM commenced this action against The National Committee for the National Pilgrim Virgin of Canada (“National Pilgrim”) and The Fatima Center U.S.A., Inc. (“Fatima Center U.S.A.”) in the Supreme Court of the State of New York, St. Lawrence County, by filing a Summons and Complaint on April 2, 2018. *See* Docket No. 1, Exhibit A-2. Thereafter, on consent of National Pilgrim and Fatima Center U.S.A., SJM filed and served a Supplemental Summons and the First Amended Complaint on June 7, 2018, adding Defendant Andrew Cesanek (“Cesanek”) as a party. *See* Docket No. 1, Exhibit A-28.

6. Following a change in venue, Defendants removed this matter to the United States District Court for the Western District of New York on July 2, 2018. *See* Docket No. 1.

7. On July 9, 2018, National Pilgrim filed and served an Answer with Affirmative Defenses and Counterclaims. *See* Docket No. 9. Fatima Center USA, Inc. and Cesanek also filed and served Answers with Affirmative Defenses on July 9, 2018 and July 19, 2018 respectively. *See* Docket Nos. 10 and 16.

8. On July 27, 2018, SJM filed and served an Answer to National Pilgrim’s Counterclaims. *See* Docket No. 16.

9. On December 30, 2020, SJM filed and served SJM’s Second Amended Complaint upon the parties’ consent and the Court’s approval. *See* Docket Nos. 77 and 78.

10. On January 13, 2021, National Pilgrim filed and served an Answer with Affirmative Defenses and Counterclaims. *See* Docket No. 79. Fatima Center USA., Inc. and Cesanek also filed and served Answers with Affirmative Defenses that same date. *See* Docket Nos. 80 and 82.

11. On January 28, 2021, SJM filed and served an Answer to National Pilgrim’s Counterclaims. *See* Docket No. 83.

12. SJM's Second Amended Complaint asserts cause of actions against both National Pilgrim and Fatima Center, U.S.A., Inc. for Common Law Trademark Infringement (First), Violation of Lanham Act, 15 U.S.C. 1125 (Second), Violations of New York General Business Law § 397 (Third), § 360-L (Fifth), and § 349 (Sixth), Common Law Unfair Competition (Fourth), Conversion of SJM's Mailing List (Seventh), Defamation (Eighth, Ninth, and Tenth), and Aiding and Abetting Breach of Fiduciary Duty (Fourteenth). *See* Docket No. 78. SJM also asserts additional causes of action against National Pilgrim for Conversion of SJM's Niagara Falls Facility Funds and Property (Eighth and Ninth) and Cesanek for Breach of Fiduciary Duty (Thirteenth).

See id.

13. National Pilgrim's Answer with Affirmative Defenses and Counterclaims asserts six causes of action against SJM for Unfair Competition, 15 U.S.C. § 1125 (First), Unfair Competition (Second), Violations of General Business Law § 360-L (Third) and §133 (Fourth), New York Trademark Infringement (Fifth) and Conversion (Sixth). *See* Docket No. 79.

14. A copy of SJM's Responses to National Pilgrim's First Set of Interrogatories dated March 22, 2019 is attached hereto as **Exhibit "1."**

15. Copies of SJM's Responses and Supplemental Responses to National Pilgrim's Second Set of Interrogatories dated November 13, 2019 and August 12, 2020 are attached hereto as **Exhibit "2"** and **"3"** respectively.

16. A copy of Fatima Center, U.S.A.'s Responses to SJM's Interrogatories dated March 22, 2019 is attached hereto as **Exhibit "4."**

17. Copies of excerpts of National Pilgrim's First Response to SJM's Request for Production of Documents dated March 22, 2019 is attached hereto as **Exhibit "5."**

18. A copy of National Pilgrim's Responses to SJM's Interrogatories dated March 22, 2019 is attached hereto as **Exhibit "6."**

19. Copies of National Pilgrim's Letters Patent, bylaws, master business license, and business name registration are attached hereto as **Exhibit "7."**

20. Copies of SJM's tax exemption application and Internal Revenue Service approval are attached hereto as **Exhibit "8."**

21. Copies of SJM's Certificate of Incorporation, bylaws, and assumed name certificates are attached hereto as **Exhibit "9."**

22. Copies of excerpts from the book *Fatima Priest* are attached hereto as **Exhibit "10"** (highlights supplied.)

23. A copy of a letter by Fr. Michel Jarecki regarding SJM's history is attached hereto as **Exhibit "11."**

24. A copy of *The Fatima Crusader* ("Crusader") Issue 1 is attached hereto as **Exhibit "12."**

25. A copy of *Crusader* Issue 9 - 10 is attached hereto as **Exhibit "13"** (highlights supplied.)

26. A copy of *Crusader* Issue 13 – 14 is attached hereto as **Exhibit "14"** (highlights supplied.)

27. A copy of an affidavit by Fr. Nicholas Gruner, sworn to March 14, 1994, in an unrelated litigation is attached hereto as **Exhibit "15."**

28. Copies of excerpts of minutes of meetings of the National Pilgrim board of directors and members are attached hereto as **Exhibit "16."**

29. Copies of excerpts of minutes of meetings of SJM's board of directors and members are attached hereto as **Exhibit "17."**

30. Copies of excerpts National Pilgrim's financial reports for 1987, 1991, 1992 and 2011 through 2017 are attached hereto as **Exhibit "18."**

31. Copies of National Pilgrim's reports of donations received from SJM from 2012 through 2017 are attached hereto as **Exhibit "19."**

32. Copies of excerpts of SJM's 2017 General Ledger setting forth SJM's donations to National Pilgrim are attached hereto as **Exhibit "20."**

33. Copies of excepts of SJM's financial reports for 2011 through 2017 are attached hereto as **Exhibit "21."**

34. Copies of excepts of SJM's General Ledger for 2015 through 2017 setting forth SJM's payments for professional writing are attached hereto as **Exhibit "22."**

35. Copies of the United States and Canadian versions of *Crusader* Issue 46 are attached hereto as **Exhibits "23" and "24"** respectively.

36. Copies of sample "Fatima Center" materials are attached hereto as **Exhibit "25."**

37. A copy of National Pilgrim's president Leonard Cecere's ("Cecere") April 17, 2017, an electronic mail message is attached hereto as **Exhibit "26."**

38. Copies of samples of *Crusader* issues and Fatima Center mailings referring to SJM are attached hereto as **Exhibit "27"** (highlights supplied.)

39. Copies of excepts of *Crusader* issues authored by or referring to Fr. Paul Kramer, also referred to as Fr. Paul Leonard, are attached hereto as **Exhibit "28"** (highlights supplied.)

40. A copy of National Pilgrim employee Michael Longval's ("Longval") October 6, 2014 electronic mail message is attached hereto as **Exhibit "29."**

41. A copy of the Fatima Center Organizational Chart for the Fort Erie, Ontario and Niagara Falls, New York locations is attached hereto as **Exhibit “30.”**

42. Copies of SJM employee and vice president Andrew Cesanek’s payroll records, W-2s, and intra-company transfer records are attached hereto as **Exhibits “31,” “32” and “33”** respectively.

43. A copy of Cecere’s February 1, 2017 electronic mail message regarding Cesanek are attached hereto as **Exhibit “34.”**

44. A copy of the brochure regarding Cesnaek is attached hereto as **Exhibit “35.”**

45. Copies of a confidential SJM electronic mail message forwarded by Cesanek to Cecere on August 17, 2017 are attached hereto as **Exhibit “36.”**

46. A copy of the letter to Cesanek terminating his employment with SJM is attached hereto as **Exhibit “37.”**

47. Copies of the deed, mortgage commitment, and closing statement evidencing SJM’s purchase of a commercial building in Niagara Falls, New York (“SJM’s Niagara Falls Facility”) are attached hereto as **Exhibit “38.”**

48. Copies of electronic mail messages addressing SJM’s activities at the Constable, New York location and SJM’s Niagara Falls Facility are attached hereto as **Exhibit “39.”**

49. Copies of promotional materials to raise funds for SJM’s Niagara Falls Facility are attached hereto as **Exhibit “40.”**

50. Copies of National Pilgrim’s reports regarding the donations received from the Niagara Falls facility appeal are attached hereto as **Exhibit “41.”**

51. Copies of documents and electronic mail messages regarding the creation and implementation of “Fatima Tracker” software are attached hereto as **Exhibit “42.”**

52. Copies of the July 14, 2017 electronic mail messages from Cecere regarding the creation of a tax-exempt “501(c)(3)” entity to replace SJM are attached hereto as **Exhibit “43.”**

53. Copies of the Fatima Center U.S.A. Certificate of Incorporation, bylaws and correspondence with the Internal Revenue Service are attached hereto as **Exhibit “44.”**

54. Copies of electronic mail messages and of the July 24, 2017 meeting “Discussion Points” is attached hereto as **Exhibit “45.”**

55. Copies of the July 27, 2017 electronic mail messages concerning Fr. Kramer are attached hereto as **Exhibit “46.”**

56. A copy of the Fatima Center U.S.A. corporate resolution dated July 27, 2017 is attached hereto as **Exhibit “47.”**

57. A copy of the purported lease between SJM and National Pilgrim is attached hereto as **Exhibit “48.”**

58. A copy of an affidavit by Cesanek sworn to May 2, 2018, without exhibit, given in this action before he was added as a party is attached hereto as **Exhibit “49.”**

59. Copies of Fatima Center U.S.A.’s CHAR410 Form, dated March 25, 2019 and New York State Department of State Division of Corporations listing dated November 8, 2019, are attached hereto as **Exhibit “50.”**

60. Copies of a July 10, 2017 letter from counsel for SJM to National Pilgrim and August 1, 2017 electronic mail messages and attachment from SJM to National Pilgrim are attached hereto as **Exhibit “51.”**

61. A copy of an August 8, 2017 electronic mail message from National Pilgrim employee Joanna Swords regarding materials removed from SJM’s Constable office is attached hereto as **Exhibit “52.”**

62. A copy of *Crusader* Issue 118 is attached hereto as **Exhibit “53.”**
63. A copy of the August 22, 2017 National Pilgrim and Fatima Center U.S.A. letter to donors regarding National Pilgrim’s severance from SJM and establishment of Fatima Center U.S.A. is attached hereto as **Exhibit “54.”**
64. A copy of the August 24, 2017 electronic mail message from Cecere to SJM’s board of directors severing National Pilgrim’s relationship with SJM is attached hereto as **Exhibit “55.”**
65. A copy of the September 1, 2017 National Pilgrim and Fatima Center U.S.A. letter to donors signed by Cesanek is attached hereto as **Exhibit “56.”**
66. A copy of the National Pilgrim and Fatima Center U.S.A. “URGENT NOTICE” distributed by Fatima Center U.S.A. is attached hereto as **Exhibit “57.”**
67. A copy of the September 20, 2017 electronic mail message from Longval to SJM vice president Ellen Montgomery (“Montgomery”) is attached hereto as **Exhibit “58.”**
68. Copies of SJM’s September 16, 2017 Resolution, September 21, 2017 letter from SJM’s counsel to National Pilgrim, October 10, 2017 letter from National Pilgrim to SJM’s counsel, November 22, 2017 letter from Fatima Center U.S.A.’s counsel, and December 21, 2017 letter from SJM’s counsel to Fatima Center U.S.A.’s counsel and National Pilgrim, are attached hereto as **Exhibit “59.”**
69. Copies of letters from confused SJM donors are attached hereto as **Exhibit “60.”**
70. Copies of donor checks intended for SJM but delivered to Fatima Center U.S.A., are attached hereto as **Exhibit “61.”**
71. A copy of SJM former employee Ellen Swezczuk’s (“Swezczuk”) March 15, 2019 electronic mail message is attached hereto as **Exhibit “62.”**

72. Copies of documents pertaining to the Estate of Richard T. Farrell are attached hereto as **Exhibit “63.”**

73. Copies of documents pertaining to the Estate of Margaret Ann Bellotti are attached hereto as **Exhibit “64.”**

74. Copies of documents pertaining to the Estate of Antoinette L. Roccaforte are attached hereto as **Exhibit “65.”**

75. Copies of documents pertaining to the Estate of Charles D. Jackson are attached hereto as **Exhibit “66.”**

76. Copies of excerpts of SJM’s financial records from 2018 through 2020 are attached hereto as **Exhibit “67.”**

77. Copies of excerpts of National Pilgrim’s financial records from 2018 through 2020 are attached hereto as **Exhibit “68.”**

78. Copies of excerpts of Fatima Center U.S.A.’s financial records from 2017 through 2020 are attached hereto as **Exhibit “69.”**

79. Copies of transcripts of the deposition of Montgomery are attached hereto as **Exhibit “70.”**

80. Copies of excerpts of transcripts of the deposition of Fr. Kramer are attached hereto as **Exhibit “71.”**

81. Copies of excerpts of transcripts of the deposition of former National Pilgrim employee and director and SJM corporate secretary Coralie Graham are attached hereto as **Exhibit “72.”**

82. Copies of excerpts of transcripts of the deposition of SJM director Thomas Masset deposition transcript are attached hereto as **Exhibit “73.”**

83. Copies of excerpts of transcripts of the deposition of SJM employee Kimberly Heininger are attached hereto as **Exhibit “74.”**

84. Copies of excerpts of transcripts of the deposition of SJM employee Edna Snyder are attached hereto as **Exhibit “75.”**

85. Copies of excerpts of transcripts of the deposition of former SJM employee and vice president and current Fatima Center U.S.A. employee and vice president Cesanek are attached hereto as **Exhibit “76.”**

86. Copies of excerpts of transcripts of the deposition of National Pilgrim employee Denise Bealieu are attached hereto as **Exhibit “77.”**

87. Copies of excerpts of National Pilgrim employee from the Michael Longval deposition transcript are attached hereto as **Exhibit “78.”**

88. Copies of excerpts of transcripts of the deposition of National Pilgrim employee Swords are attached hereto as **Exhibit “79.”**

89. Copies of excerpts of transcripts of the deposition of National Pilgrim employee Kelly Maciek are attached hereto as **Exhibit “80.”**

90. Copies of excerpts of transcripts of the deposition of National Pilgrim director Miriam Gruner deposition transcript are attached hereto as **Exhibit “81.”**

91. Copies of excerpts of transcripts of the deposition of National Pilgrim president Cecere are attached hereto as **Exhibit “82.”**

92. Copies of excerpts of transcripts of the deposition of former SJM contract writer Edwin Faust are attached hereto as **Exhibit “83.”**

93. Copies of excerpts of transcripts of the deposition of National Pilgrim employee Ellen Trombley deposition transcript are attached hereto as **Exhibit “84.”**

94. Copies of excerpts of transcripts of the deposition of former SJM employee Swczek deposition transcript are attached hereto as **Exhibit “85.”**

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 24, 2021

s/ Matthew J. Larkin
Matthew J. Larkin, Esq.